Supreme Court, U.S.
FILED

981571 MAR 29 1999

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

INGRAM BARGE COMPANY and
INGRAM OHIO BARGE COMPANY,

Petitioners,

v.

CLAIMANTS' STEERING COMMITTEE,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In adopting the Limitation of Liability Act, 46 U.S.C. app. § 181, *et seq.*, did Congress intend for shipowners facing liability in Louisiana, Texas or Mississippi to be afforded lesser rights than shipowners facing liability in Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon or Washington, or should the split between the Fifth and Ninth Circuits regarding the proper scope of the stay authorized by the Limitation of Liability Act be resolved so that uniformity can be restored?

2. When litigation in state court against a non-vessel owner threatens to infringe upon a federal court's exclusive jurisdiction to resolve issues relating to limitation of liability, and when such state court litigation threatens to exhaust the shipowner's insurance coverage, is it within the limitation court's authority to extend the Limitation of Liability Act stay to enjoin the commencement and/or further prosecution of claims against a non-vessel owner?

STATEMENT PURSUANT TO RULE 29.6

Ingram Barge Company and Ingram Ohio Barge Company are both wholly-owned subsidiaries of Ingram Industries, Inc.

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Ingram Barge Company and Ingram Ohio Barge Company (collectively "Ingram") respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on December 30, 1998, to resolve the conflict between the Fifth and Ninth Circuit Courts of Appeals on the important issue presented herein.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is unpublished by order of the Fifth Circuit. This opinion is reprinted in Appendix "A." The opinions and orders of the district court are also unpublished. These opinions and orders are reprinted in Appendix "B."

STATEMENT OF JURISDICTION

The Judgment of the United States Court of Appeals for the Fifth Circuit was entered on December 30, 1998. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Limitation of Liability Act provides, in pertinent part:

> 46 U.S.C. app. § 185. Petition for limitation of liability; deposit of value of interest in court; transfer of interest to trustee.
>
> The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a

district court of the United States of competent jurisdiction for limitation of liability within the provisions of this chapter and the owner (a) shall deposit with the court for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title, or (b) at his option shall transfer, for the benefit of claimants, to a trustee to be appointed by the court his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease.

46 U.S.C. app. § 187. Remedies reserved.

Nothing in sections 182, 183, 184, 185 and 186 of this title shall be construed to take away or affect the remedy to which any party may be entitled, against the master, officers, or seamen, for or on account of any embezzlement, injury, loss, or destruction of merchandise, or property, put on board any vessel, or on account of any negligence, fraud, or other malversation of such master, officers, or seamen, respectively, nor to lessen or take away any responsibility to which any master or seaman of any vessel may by law be liable,

notwithstanding such master or seaman may be an owner or part owner of the vessel.

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition in the Courts Below

On March 20, 1997, Ingram filed a petition for exoneration from or limitation of liability in the United States District Court for the Middle District of Louisiana pursuant to that court's admiralty and maritime jurisdiction. The district court issued a stay enjoining the commencement and/or further prosecution of any action or proceeding against Ingram and/or their underwriters with respect to any claim for which Ingram sought exoneration from or limitation of liability. Subsequently, Ingram filed a motion to amend the stay to further enjoin the prosecution of claims against the pilot of the M/V F.R. BIGELOW. In a Minute Entry dated June 20, 1997, the district court granted Ingram's motion to amend the stay. The Claimants' Steering Committee, acting on behalf of the Claimants in Limitation, subsequently moved the court to recall, vacate, and/or reconsider the amendment of the stay. In a Minute Entry dated September 19, 1997, the district court granted the Claimants' motion. On October 14, 1997, Ingram timely appealed the district court's order pursuant to 28 U.S.C. § 1292(a)(1). The Fifth Circuit affirmed the district court's ruling in a judgment entered on December 30, 1998.

B. Statement of Facts

At approximately 5:00 p.m. on March 17, 1997, the M/V F.R. BIGELOW, with 25 loaded barges in tow, was southbound on the Mississippi River near Baton Rouge, Louisiana, with Don Carlton, an Ingram pilot, at the helm.

As a result of extremely unusual river conditions, the M/V F.R. BIGELOW and her tow allided with a bridge owned by the State of Louisiana at approximately mile 233.8, Lower Mississippi River, known as the Baton Rouge Rail Road and Highway 190 Bridge. Although 24 of the 25 barges were dry cargo barges carrying coal, rock, and grain, one of the barges in the tow, the IB-960, was loaded with a cargo of aromatic hydrocarbons. That one barge capsized, and over the course of the next 11 days, while the barge and the vast majority of its cargo were successfully salvaged, fifteen percent of the cargo escaped. Approximately 19,000 individuals in and around the Baton Rouge, Louisiana, area claimed to have sustained damages as a result of the release of aromatic hydrocarbons from the barge IB-960.

On March 20, 1997, Ingram filed a petition for exoneration from or limitation of liability and the district court issued a stay (the "Limitation Stay") pursuant to the Limitation of Liability Act (the "Limitation Act"). Seeking to circumvent Ingram's limitation action and the Limitation Stay, numerous plaintiffs instituted several class actions and non-class actions against Carlton and other Ingram crewmembers in various state and federal courts.

The first such suit was filed on April 24, 1997, as a class action in Illinois state court against Don Carlton. In response to this suit, the district court initially expanded the March 20, 1997, Limitation Stay to enjoin suits or claims against Carlton, but later reversed itself upon motion of the Claimants in Limitation.

More recently, on the anniversary of the allision, numerous state court actions against Don Carlton and two other Ingram crewmembers were filed in East and West Baton

Rouge Parishes. Several of the state court suits against Carlton and the other Ingram employees are putative class action suits. The majority of the plaintiffs named in these suits are also claimants in the limitation action, and many of their attorneys also are involved in the limitation action.

Carlton and the other Ingram crewmembers who have been sued are persons insured under the pertinent insurance policies issued to Ingram.

REASONS FOR GRANTING THE WRIT

Ingram's Petition for Writ of Certiorari should be granted on two separate and independent grounds. First, the Fifth Circuit's ruling below is in direct conflict with the Ninth Circuit's ruling in *Complaint of Paradise Holdings, Inc.*, 795 F.2d 756, 763 (9th Cir.), *cert. denied*, 479 U.S. 1008, 107 S. Ct. 649 (1986). Sup. Ct. R. 10(a). Second, the Fifth Circuit's ruling is wholly inconsistent with a decision of this Court which delineates the proper scope of the Limitation Stay. Sup. Ct. R. 10(c). These grounds will be addressed in turn.

I.

THE FIFTH CIRCUIT'S RULING IS IN DIRECT CONFLICT WITH THE NINTH CIRCUIT'S RULING IN *PARADISE HOLDINGS*.

The Fifth Circuit's ruling below is in direct conflict with precedent set by the Ninth Circuit. In *Paradise Holdings*, the Ninth Circuit, relying on guidance derived from this Court's opinion in *Maryland Casualty Co. v. Cushing*, 347 U.S. 409, 74 S. Ct. 608 (1954), ruled that the Limitation Act *does not*

preclude a district court from staying a state court action against members of a vessel's crew. In the present case, however, the Fifth Circuit affirmed the opposite conclusion, that the Limitation Act *does preclude* a district court from staying state court actions against a member of the vessel's crew.

This split among the circuits on an important Limitation Act issue defeats the very purpose of admiralty law: uniformity. Uniformity has long been recognized as an essential element of admiralty law. In *The Lottawanna*, 88 U.S. 558, 575 (1874), this Court explained that the commercial world demands, and the Constitution requires, a uniform system of admiralty law. *See also Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 160, 40 S. Ct. 438, 440 (1920); *Lindgren v. United States*, 281 U.S. 38, 44, 50 S. Ct. 207, 210 (1930); and *Miles v. Apex*, 498 U.S. 19, 33, 111 S. Ct. 317, 326 (1990). The split among the circuits eliminates uniformity, creates uncertainty, and subjects shipowners to different rights and liabilities in various geographic areas of the United States. Given the importance of uniformity to maritime commerce and admiralty law, this result is unacceptable.

Granting Ingram's petition will therefore allow this Court to seal the fissure which exists between the Fifth and Ninth Circuits and will restore uniformity to this significant area of admiralty law.

II.

THE FIFTH CIRCUIT'S OPINION BELOW CONTRAVENES THIS COURT'S PRIOR RULING ON THE SCOPE OF THE LIMITATION OF LIABILITY ACT STAY.

Consistent with its purpose of aggregating all claims against a vessel owner in a single proceeding so that they may be decided at one time under substantive and procedural rules of admiralty law, the Limitation Act authorizes courts to enjoin the commencement or further prosecution of claims against the vessel owner outside the limitation proceeding. 46 U.S.C. app. § 185. In a few instances, plaintiffs have then attempted to sue the vessel master or shipowner's insurer. Relying on this Court's ruling in *Maryland Cas. Co. v. Cushing*, 347 U.S. 409, 422-27, 74 S. Ct. 608, 615-17 (1954), several courts have ruled that the Limitation Stay can be extended to foreclose the commencement or further prosecution of actions against the vessel's crew or insurers pending the outcome of the limitation proceeding. *See Paradise Holdings*, 795 F.2d 756, 763 (9th Cir. 1986) (vessel's master); *Guillot v. Cenac Towing Co.*, 366 F.2d 898, 905-07 (5th Cir. 1966) (insurers and officers of corporate shipowner); *In re Spanier Marine Corp.*, 1983 A.M.C. 2441, 2443 (E.D. La. 1983) (vessel's master).

In the case below, however, the Fifth Circuit, blindly adhering to its prior decision in *Zapata Haynie Corp. v. Arthur*, 926 F.2d 484 (5th Cir. 1991),[1] ruled that the

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1. In its opinion below, the Fifth Circuit explained that Ingram's appeal was "squarely foreclosed by *Zapata* . . ." and that "we are not free to revisit the issue of whether *Zapata* made the correct decision . . ."

Limitation Stay could not be expanded beyond shipowners. The court reached this conclusion by literally applying the bare words of Section 187 of the Limitation Act. The *Zapata* Court explained that extension of the limitation stay to include the vessel's master was impermissible, as the Limitation Act limits application of the stay to shipowners, and precludes its provisions from being construed in such a way as to take away or affect a remedy against the master, officers, or seamen. 926 F.2d at 485.

The Fifth Circuit's ruling can not be comported with this Court's previous decision on the scope of the Limitation Stay. In *Cushing*, this Court extended the limitation stay and made an exception to the literal terms of the Limitation Act. The Court therefore stayed a direct action against the vessel's insurer, finding that permitting such an action to precede the limitation trial would undermine the purposes of the limitation proceeding. 347 U.S. at 417-18, 74 S. Ct. at 613. Mindful of these purposes and of the Court's previous mandate that the Limitation Act be administered "in a spirit of fairness, with the view of giving to ship-owners the full benefit of the immunities intended to be secured by [the Limitation Act]," this Court in *Cushing* extended the limitation stay to a vessel's insurer, *i.e.*, a non-owner, expanding the "plain language" of 46 U.S.C. app. § 185, which authorizes the stay as to shipowners. *Id.* at 422, 74 S. Ct. at 615 (quoting *Providence & New York S.S. Co. v. Hill Mfg. Co.*, 109 U.S. 578, 588-89, 3 S. Ct. 379, 386 (1883)).

Ingram's petition should therefore be granted so that the Court may insure that the purposes behind the Limitation Act are furthered, rather than undermined, by its application.

CONCLUSION

The law with respect to the scope of the Limitation Stay is currently in an unacceptable state of flux. The existence of a split among the circuits on this important issue is damaging, as it eliminates the uniformity that is so crucial to admiralty law. With the Fifth Circuit decision, claimants will always seek to avoid the Limitation Act by simply suing the vessel captain. Moreover, the fact that the Fifth Circuit has disregarded this Court's monition in *Cushing* that the Limitation Act be interpreted flexibly yields the untenable result that shipowners facing potential liability within the Fifth Circuit are deprived of the protections and rights intended by Congress.

Ingram's petition should therefore be granted so that the Court can restore uniformity and insure that all shipowners receive the full benefit of the rights and protections to which they are entitled under the Limitation Act.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT DATED AND FILED DECEMBER 30, 1998

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-31194

Summary Calendar

In Re: In the Matter of: INGRAM BARGE COMPANY, As owner of the M/V F R Bigelow and The IB-960; INGRAM OHIO BARGE COMPANY, As owner Pro Hac Vice of the ING-371 for exoneration from or limitation of liability

INGRAM BARGE COMPANY, As owner of the M/V F R Bigelow and the IB-960; INGRAM OHIO BARGE COMPANY, As owner Pro Hac Vice of the ING-371

Appellants

versus

CLAIMANTS' STEERING COMMITTEE

Appellee

Appeal from the United States District Court
For the Middle District of Louisiana
USDC No. 97-226-A

Before HIGGINBOTHAM, JONES, AND DENNIS, Circuit Judges.

Appendix A

PER CURIAM:*

This petition stems from a March 17, 1997, maritime accident that resulted in the release of aromatic hydrocarbons and the evacuation of portions of downtown Baton Rouge. The INGRAM Barge Company and INGRAM Ohio Barge Company filed a petition for exoneration or limitation of liability pursuant to the Limitation of Liability Act, and the district court issued a stay. Plaintiffs subsequently instituted, in state and federal courts, class actions and other suits against Don Carlton, the pilot at the time of the accident, and other members of the crew. The district court subsequently refused to extend the stay to these suits, and this is an appeal of that decision.

This appeal is squarely foreclosed by *Zapata Haynie Corp. v. Arthur*, 926 F.2d 484 (5th Cir. 1991). In *Zapata*, we held that the benefits of the Limitation of Liability Act "are, by their plain terms, conferred on ship owners only." *Id.* at 485. We thus refused to extend a stay to a suit against a master. The appellants complain that *Zapata* was inconsistent with *Guillot v. Cenac Towing Co.*, 366 F.2d 898 (5th Cir. 1966). The *Zapata* court, however, distinguished *Guillot* by noting that *Zapata* involved a suit against a master, and that masters were specifically mentioned in the Act. *See* 926 F.2d at 486-87. "[S]eamen" are mentioned in the act too, 46 U.S.C. App. § 187, and we are not free to revisit the issue of whether the *Zapata* made the correct decision in distinguishing *Guillot*.

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Alternatively, appellants would have us distinguish *Zapata*, but we decline to do so. That there are over 19,000 plaintiffs here is irrelevant to the Limitation of Liability Act; if anything, it would seem to make the policy case for limitation less tenable. And the potential for interference with the objectives of a limitation action, namely the danger that the first lawsuit might have preclusive effect, seems no greater here than in *Zapata*. Regardless of whether *Zapata* was wise, it controls, and we are not prepared to distinguish it away arbitrarily.

AFFIRMED.

APPENDIX B — OPINIONS AND ORDERS OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION
NUMBER 97-226A

HONORABLE JOHN V. PARKER
SEPTEMBER 19, 1997

IN THE MATTER OF THE COMPLAINT OF INGRAM BARGE COMPANY, AS OWNER OF THE M/V F.R. BIGELOW AND THE IB-960, AND INGRAM OHIO BARGE COMPANY, AS OWNER PRO HAC VICE OF THE ING-371, PETITIONING FOR EXONERATION FROM OR LIMITATION OF LIABILITY

STATUS CONFERENCE

* * *

[2] SEPTEMBER 19, 1997

MORNING SESSION

(CIVIL ACTION NUMBER 97-226, IN THE MATTER OF THE COMPLAINT OF INGRAM BARGE COMPANY, AS OWNER OF THE "M/V F.R. BIGELOW"; MATTER CONVENED AT TEN O'CLOCK A.M.)

Appendix B

THE COURT: ALTHOUGH THERE WERE SEVERAL MOTIONS ORIGINALLY INVOLVED HERE, I THINK WE'VE CUT THEM DOWN TO ONLY THE CLAIMANTS MOTION TO RECALL, VACATE, SET ASIDE, RECONSIDER, ERASE, ET CETERA THE STAY ORDER ENTERED ON JUNE 24, 1997. I THINK THAT'S WHAT WE'RE TALKING ABOUT, BECAUSE — LET'S SEE, MR. SPAHT, I THINK YOU'VE WITHDRAWN THIS CONTEMPT BUSINESS; HAVEN'T YOU?

MR. SPAHT: THAT'S CORRECT, YOUR HONOR.

THE COURT: SOMEHOW, THIS MOTION ON THE LUHR BROS. TO FILE A CLAIM, IT SLIPPED THROUGH THE CRACKS UP HERE, BUT I SIGNED THAT YESTERDAY, SO THAT TAKES CARE OF THAT. I THINK THAT'S THE ONLY REMAINING ISSUE WE HAVE.

I UNDERSTAND YOU ALL WERE UP WITH MAGISTRATE JUDGE RIEDLINGER THIS MORNING, ALSO. IF ANYBODY WANTS TO BE HEARD ON THIS CLAIMANTS MOTION TO RECALL, VACATE, ET CETERA, LEAD OFF.

MR. ARSENAULT: GOOD MORNING, YOUR HONOR. RICHARD ARSENAULT HERE ON BEHALF OF THE CLAIMANTS [3] STEERING COMMITTEE.

THE COURT: ALL RIGHT.

MR. ARSENAULT: JUDGE, THE ISSUE PRESENTED BY OUR MOTION IS WHETHER THE STAY

CURRENTLY IN EFFECT, WITH REGARD TO THE VESSEL OWNER, CAN BE EXTENDED TO AN INDIVIDUAL TO WHICH THE LIMITATION OF LIABILITY ACT DOES NOT AND CANNOT APPLY. ESSENTIALLY, OUR POSITION IS THAT THERE ARE AT LEAST THREE DIFFERENT —

THE COURT: LET ME SAY THIS: HAVING HAD AN OPPORTUNITY TO ACTUALLY LOOK AT THE LAW, I'M CONVINCED THAT THE STAY ORDER CANNOT BE EXTENDED TO ANYBODY EXCEPT A SHIP OWNER, AND THE *ZAPATA* CASE IS ONE OF MANY THAT HOLDS TO THAT EFFECT.

I'LL BE HAPPY TO LET YOU ORATE FOR A WHILE, IF YOU FEEL COMPELLED TO DO SO, BUT YOU PROBABLY HAD BETTER QUIT WHILE YOU'RE AHEAD. AND IF YOU HAVE SOME LATE-BREAKING AUTHORITY THAT HAS REVERSED *ZAPATA* AND OTHER CASES TO THE SAME EFFECT, I'LL BE GLAD TO HEAR IT.

MR. FENDLER: YOUR HONOR, GENE FENDLER ON BEHALF OF INGRAM.

LET ME FIRST POINT OUT THAT THE COURT HAD GRANTED THE STAY ORDER WITH RESPECT TO THE ALLEN CLAIMANTS. THEY HAD MOVED TO HAVE THE COURT RECONSIDER THAT. THE COURT DENIED THAT MOTION, AND THEY HAVE FILED A NOTICE OF APPEAL.

[4] THE COURT: WELL, I DIDN'T DENY THE MOTION. AT LEAST I DID NOT INTEND TO DENY THE MOTION. I INTENDED TO LET IT PROCEED FOR DEPOSITIONS AND HEAR THE MOTION WHEN IT CAME UP IN REGULAR ORDER, BUT APPARENTLY IT WAS CONSTRUED AS HAVING BEEN DENIED, AND APPARENTLY AN APPEAL HAS BEEN ENTERED.

MR. FENDLER: YES, SIR, INDEED, YOUR HONOR. AND I WOULD LIKE TO POINT OUT SOMETHING TO THE COURT WITH RESPECT TO THE *ZAPATA* CASE. THE *ZAPATA* CASE SAYS THAT YOU HAVE TO READ THE SECTION 187, 46 U.S.C., LIMITATION LITERALLY. WITH ALL DUE RESPECT TO THE PANEL IN THE ZAPATA CASE —

THE COURT: WELL, I DON'T NECESSARILY HAVE TO RESPECT THEM, BUT I DO HAVE TO FOLLOW THEM.

MR. FENDLER: WELL, LET ME SUGGEST TO YOU, YOUR HONOR, THAT THERE'S A — THAT YOU HAVE — AN EARLIER PANEL ON THE FIFTH CIRCUIT, THE *GUILLOT* OPINION, SAYING THAT WHERE THE INSURANCE IS IMPLICATED, THAT THE CASE CAN BE STAYED. SO, YOU DO HAVE TWO DIFFERENT PANELS. WE HAVE ADVICE FROM TWO DIFFERENT PANELS ON THE FIFTH CIRCUIT, PLUS YOU HAVE THE *PARADISE HOLDINGS* DECISION, WHICH HELD THAT YOU COULD STAY THE ACTION AGAINST THE CAPTAIN.

Appendix B

I THINK IT'S IMPORTANT — I'D LIKE TO MAKE THIS POINT, YOUR HONOR, AND I WILL BE BRIEF. THE *ZAPATA* [5] COURT SAYS YOU READ IT LITERALLY. IF YOU READ SECTION 187 LITERALLY, AND, INDEED, IF YOU READ THE ENTIRE LIMITATION OF LIABILITY ACT, THERE IS NOTHING IN THERE THAT SAYS A COURT CANNOT STAY AN ACTION, AND GIVEN THE FACT THAT IN *GUILLOT* THE FIFTH CIRCUIT SAID WHERE INSURANCE IS IMPLICATED, WHICH HAS BEEN RAISED NOW BY THE CLAIMANTS COMMITTEE IN THEIR MOTION, HAVING GOTTEN DISCOVERY OF OUR POLICIES, AND ARE SUGGESTING THAT THERE IS INSURANCE IMPLICATED, *GUILLOT* SAYS WHERE INSURANCE IS IMPLICATED, YOU SHOULD STAY.

ZAPATA HAYNIE SAYS READ IT LITERALLY, WE CAN'T LOOK TO SEE WHAT THE INTENT WAS; BASICALLY, SORT OF THAT WE DON'T KNOW ABOUT *GUILLOT*, BUT IF YOU READ THE ACT LITERALLY, THERE IS ABSOLUTELY NOTHING THAT SAYS YOU CANNOT STAY IT.

THERE IS SOMETHING IN THE ACT THAT SAYS YOU CANNOT CHANGE THE RIGHTS OF THE PARTIES, YOU CANNOT EFFECT THE RIGHTS OF PARTIES AGAINST PEOPLE SUCH AS MASTERS OR MEMBERS OF THE CREW. THERE IS NOTHING IN THE ACT THAT SAYS YOU CAN'T STAY.

JUDGE SEAR, A YEAR AFTER *ZAPATA*, SPECIFICALLY SAID THE LAW IN THE FIFTH CIRCUIT —

Appendix B

THE COURT: THAT'S IN THE EASTERN DISTRICT.

MR. FENDLER: I AGREE, YOUR HONOR, BUT JUST TO SHOW YOU THAT THERE IS AUTHORITY HERE, THIS IS A MAY [6] 6, 1992, CASE, CITED IN OUR BRIEF, SAYS, "THEREFORE, IT APPEARS THE FIFTH CIRCUIT, WHERE THERE IS A CONCERN OF DEPLETION OF INSURANCE FUNDS, IS OF THE OPINION THAT IT IS WELL WITHIN THE COURT'S POWER TO STAY AN ACTION AGAINST ANY BENEFICIARY OF AN INSURANCE POLICY."

THE CLAIMANTS STEERING COMMITTEE MOTION HAS SAID THAT IT APPEARS THAT THE — IT CERTAINLY ALLEGES THAT THE INSURANCE OF INGRAM IS IMPLICATED WITH RESPECT TO THE ACTIONS AGAINST THE PILOT. BASED THEN ON *GUILLOT*, WHICH IS THE FIFTH CIRCUIT CASE THAT SAYS WHERE YOU IMPLICATE THE INSURANCE, YOU HAVE THE POWER TO STAY IT. AND THE FACT THAT THE *ZAPATA* CASE SAYS READ THE ACT LITERALLY.

THERE IS NOTHING IN THE ACT THAT SAYS YOU CAN'T STAY IT. IT SIMPLY SAYS YOU CAN'T EFFECT THEIR RIGHTS. SO, YOU ULTIMATELY CAN'T STOP IT FROM GOING FORWARD. IF YOU CAN STAY IT SO THAT THE VERY ESSENCE OF THE LIMITATION, THE ORDERLY PROSECUTION OF THE CASE, CAN BE FOLLOWED.

FOR THAT REASON, YOUR HONOR, I THINK WE CAN — EVEN ON READING *ARTHUR VERSUS*

ZAPATA HAYNIE, READING IT PRECISELY, THE LANGUAGE THAT IS IN THERE, YOU CAN COME TO THE CONCLUSION THAT SINCE INSURANCE HAS BEEN IMPLICATED, HERE YOU SHOULD ENTER A STAY.

AND MAY I SUGGEST JUST ONE FINAL THING, FOOTNOTE [7] IN *ZAPATA HAYNIE VERSUS ARTHUR*, THE FIFTH CIRCUIT SAYS, AFTER TALKING ABOUT *GUILLOT* AND *PARADISE HOLDINGS*, THE FIFTH CIRCUIT SAYS, "FURTHERMORE, THERE WAS NOTHING IN THE RECORD REGARDING THE EXTENT OF ZAPATA'S LIABILITY INSURANCE OR WHETHER CAPT. GOFF (PHONETIC) WAS THE NAMED INSURED ON ZAPATA'S POLICY WHEN IT MOVED TO AMEND THE RESTRAINING ORDER."

HERE THERE IS EVIDENCE THAT HAS BEEN PUT BEFORE THE COURT THAT THERE IS INSURANCE THAT, INDEED, THERE IS AN ALLEGATION THAT THE CAPTAIN IS AN ADDITIONAL INSURED BY ALLOWING AN ACTION TO GO AGAINST — I SAID THE CAPTAIN, THE PILOT — BY ALLOWING AN ACTION TO GO AGAINST THE PILOT, AND POSSIBLY DEPLETE THE INSURANCE PROCEEDS THAT WOULD OTHERWISE BE AVAILABLE TO INGRAM, YOU ARE RUNNING EXACTLY COUNTER TO WHAT WAS SAID IN *GUILLOT* AND *PARADISE HOLDINGS*.

BUT *GUILLOT* IS FIFTH CIRCUIT AUTHORITY, AND FOR THAT REASON, UNLIKE *ZAPATA*, WHERE IT SAYS INSURANCE IS NOT EVEN BEFORE US, YOU DO HAVE THE AUTHORITY TO ENTER A STAY.

Appendix B

THE COURT: WELL, I THINK, UNDER CERTAIN CIRCUMSTANCES, A STAY CERTAINLY CAN BE ENTERED IN THE DISCRETION OF A DISTRICT COURT. I THINK THAT IN THIS CASE THE STAY, THAT I PREVIOUSLY ENTERED BACK IN JUNE, PROBABLY SERVED A USEFUL PURPOSE TO ALLOW FOLKS TO KIND [8] OF SORT THEMSELVES OUT A LITTLE BIT AND GET UP AND RUNNING, BUT I'M GOING TO VACATE THAT STAY AT THIS TIME.

IF THERE'S IS A GOOD REASON WHY WE SHOULD STAY SOMETHING IN THE FUTURE, THEN YOU CAN CERTAINLY MAKE A MOTION TO THAT EFFECT, BUT AT THIS STAGE I'M CONVINCED THAT THE COURT, IF IT HAS DISCRETION, WILL EXERCISE DISCRETION AGAINST STAYING ANY OTHER PROCEEDINGS.

MR. FENDLER: SO, IF WE BELIEVE WE HAVE GOOD CAUSE, WE CAN COME BACK TO THE COURT WITH A MOTION TO REINSTATE THE STAY?

THE COURT: YOU CAN ALWAYS MAKE A MOTION. I DON'T KNOW ABOUT THE APPEAL. THEY CAN HANDLE THAT WITH THE FIFTH CIRCUIT, BUT THE ORDER HAS BEEN VACATED.

YES, SIR?

(UNIDENTIFIED): YOUR HONOR, IN REFERENCE TO THAT, WE'LL DISMISS THE APPEAL WITH THE FIFTH CIRCUIT.

THE COURT: THAT'S UP TO YOU.

(UNIDENTIFIED): THE ORDER THE COURT SIGNED ON THE 24TH OF JUNE IS NOW VACATED IN ITS ENTIRETY. IS THAT CORRECT, YOUR HONOR?

THE COURT: YES. I DON'T THINK WE HAVE ANYTHING ELSE, OTHER THAN YOU ALL ARE STILL PUTTING THINGS TOGETHER?

MR. DUDENHEFER: YES, SIR, YOUR HONOR. FRANK [9] DUDENHEFER FOR THE COMMITTEE. WE MET THIS MORNING WITH THE MAGISTRATE JUDGE AND WE'RE MOVING FORWARD WITH LIABILITY DISCOVERY. WE HAVE SOME DISCOVERY SET NEXT WEEK. WE'RE IN THE PROCESS OF RESOLVING SOME CLAIM FORM INFORMATION AND WE SHOULD BE ABLE TO START GENERATING RESPONSES TO CLAIMANT DAMAGE DISCOVERY WITHIN THE NEXT THIRTY DAYS, SO I THINK THE CASE IS MOVING ALONG WELL.

MR. FENDLER: I THINK MAGISTRATE JUDGE RIEDLINGER IS GOING TO ISSUE AN ORDER REQUIRING THE PLAINTIFF DISCOVERY TO PROCEED, AND HE INDICATED HE WAS GOING TO HAVE A TIME FRAME FOR IT, YOUR HONOR.

THE COURT: ALL RIGHT, THANK YOU.

* * * *

Appendix B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

MINUTE ENTRY:
SEPTEMBER 19, 1997
PARKER, C. J.

CIVIL ACTION

NO. 97-226-A

IN THE MATTER OF THE COMPLAINT OF INGRAM BARGE COMPANY, AS OWNER OF THE M/V F.R. BIGELOW AND THE IB-960, AND INGRAM OHIO BARGE CO., AS OWNER PRO HAC VICE OF THE ING-371

This cause came on this day for oral argument on motion of Claimants to Recall/Vacate and or Reconsider.

PRESENT: Don Haycraft,Esq.
Paul H. Spaht,Esq.
Counsel for Ingram Barge

Richard J. Arsenault,Esq.
Andre J. LaPlace,Esq.
Frank Dudenhefer,Esq.
Counsel for Claimant's Steering Committee

Counsel present their arguments to the court.

Appendix B

For the reasons read into the record, the Motion of Claimants to Recall/Vacate and or Reconsider is GRANTED.

* * * * *

Kay Raborn/reporter

Appendix B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION

NO. 97-226

SECTION "A"

MAGISTRATE "1"

IN THE MATTER OF THE COMPLAINT OF INGRAM BARGE COMPANY, AS OWNER OF THE M/V F.R. BIGELOW AND THE IB-960, AND INGRAM OHIO BARGE CO., AS OWNER *PRO HAC VICE* OF THE ING-371, PETITIONING FOR EXONERATION FROM OR LIMITATION OF LIABILITY

ORDER

Considering Ingram's Motion to Amend Stay, it is hereby ordered that paragraph 6 of the Court's Order Approving Plaintiffs' Affidavit of Valuation and *Ad Interim* Stipulation and Directing Issurance of Notice to Claimants and Restraining Prosecution of Claims is amended to read as follows:

> 6. IT IS FURTHER ORDERED that the commencement and/or further prosecution of any action or proceeding against the petitioners and/or its underwriters or any of petitioners' property and/or Donald E. Carlton with respect to any claim

for which petitioners seek exoneration from or limitation of liability, including any claim arising out of or connected in any way with any loss, damage, death, injury or destruction resulting from the casualty described in the Complaint be, and the same is, hereby stayed and restrained, and all prior orders, rulings or decrees issued in conjunction with any heretofore filed libels or claims be stayed and restrained until the hearing and determination of this proceeding; and

Baton Rouge, Louisiana, this 20th day of June, 1997.

s/ John V. Parker
JUDGE

(2)

Supreme Court, U.S.
FILED
APR 21 1999
OFFICE OF THE CLERK

No. 98-1571

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

INGRAM BARGE COMPANY and
INGRAM OHIO BARGE COMPANY,

Petitioners,

v.

CLAIMANTS' STEERING COMMITTEE,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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THE QUESTION ACTUALLY PRESENTED FOR REVIEW

The Claimants' Steering Committee[1] respectfully suggests that the real question presented on review, despite Petitioners' suggestions regarding what they characterize as a "split" between the Fifth and Ninth Circuit Courts of Appeal and threats of the depletion of its own shipowner's insurance, is simply whether the clear language of the Shipowners' Limitation of Liability Act prohibits extension of stay orders in limitation of liability cases to the crew members of the vessel whose owner is seeking exoneration from or limitation of its liability. Respondent suggests that United States District Judge John V. Parker and the United States Court of Appeals for the Fifth Circuit both correctly understood this prohibition and ruled correctly in the case below that Petitioners' vessel crew member employees were not entitled to have the stay in limitation extended to include separate, non-limitation lawsuits against those employees.

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1. The Claimants' Steering Committee is a group of lawyers appointed by United States District Judge John V. Parker to manage the litigation on the behalf of all persons who have filed claims and answers into the limitation proceeding arising from the March 17, 1997 allision of Ingram Barge Company's vessel, M/V F.R. Bigelow, with the U.S. Highway 190 Bridge at Baton Rouge, Louisiana.

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In re: Waterman Steamship Corp., 1993 A.M.C. 1501 (E.D. La. 1992) 6, 7, 8

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Rules:

Supplemental Rules for Certain Admiralty and Maritime Claims, Rule F 1, 2, 3, 4

Other Authorities:

Gilmore & Black, *The Law of Admiralty* (2d ed. 1975) 9, 10

Frank L. Maraist, *Admiralty in a Nutshell* 10

Volume 888 of the F.2d series, at pages C-CII 3

SUMMARY OF THE ARGUMENT

Ingram Barge Company's and Ingram Ohio Barge Company's (collectively "Ingram") Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit should be denied. On September 19, 1997, when the real, underlying issue was first addressed by United States District Judge John V. Parker of the Middle District of Louisiana, His Honor correctly concluded:

> Having had an opportunity to actually look at the law, I am convinced that the stay order cannot be extended to anybody except a ship owner, and the *Zapata* case is one of many that holds to that effect.

The Limitation of Shipowners' Liability Act[2] ("the Act") is inapplicable to vessel crew members named as defendants in collateral proceedings.

REASONS FOR DENYING THE WRIT

The real issue presented is whether a federal district court has the power to extend a stay order beyond the clear limits of the Act. The Act, as well as established jurisprudence, explicitly deprives federal district courts of the power to expand stays to include vessel crew members.

Judge John Minor Wisdom, speaking for the Fifth Circuit in *Zapata Haynie Corp. v. Arthur*, 926 F.2d 484 (5th Cir. 1991) made it abundantly clear that the stay provisions of the Act apply solely to stays of suits against shipowners. The Supplemental Rules for Certain Admiralty and Maritime

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2. 46 U.S.C. § 181, *et seq.*

Claims, Rule F, which permits enjoining proceedings against the owner, makes no reference to enjoining proceedings against any other parties.[3]

The following passages from *Zapata* provide clear guidance regarding the issue at bar;

- The Act provides for stays of litigation against ship owners, not masters; therefore we find that a stay of litigation against the master is not within the scope of the Act.

Zapata at page 486.

- Furthermore, section 187 plainly states that the provisions of the Act pertaining to stays of proceedings against the owner (§§ 182, 183, 184, 185 & 186) are not to be construed to affect the remedy to which any party may be entitled against the master.

Zapata at page 486.

- The various provisions of the Act are not ambiguous, nor are they in conflict with one another: The Act requires stays of proceedings against ship owners; it does not permit stays of proceedings against masters.

Zapata at page 486.

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3. *See Zapata*, at pages 485 and 486.

> • . . . this Court cannot interpret § 187, to allow results that we believe Congress would wish; we must interpret the language that Congress actually wrote.

Zapata at page 486.

Ingram's petition represents, for a third time in this litigation, a request for an impermissible judicial expansion of the Act. If Congress had desired to extend the stay provisions of the Act, it could have. Congress has not and our judiciary cannot expand the stay provisions beyond that clearly defined limit.

During proceedings before Judge Parker, Ingram cited several cases for the proposition that a limitation stay can be extended to foreclose the prosecution of actions against the vessel's crew or insurers pending the outcome of the limitation proceeding. However, those cases[4] were all decided before the Fifth Circuit's 1991 opinion by Judge Wisdom[5] in *Zapata*.

Zapata is unequivocal in its declaration that the unambiguous language of § 187 and Supplemental Rules for

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4. Ingram cited the following cases in support of this proposition: *Maryland Cas. Co. v. Cushing*, 74 S. Ct. 608 (1954); *Complaint of Paradise Holdings, Inc.*, 795 F.2d 756 (9th Cir. 1986); *Guillot v. Cenac Towing, Inc.*, 366 F.2d 898 (5th Cir. 1966), and *In re: Spanier Marine Corp.*, 1983 A.M.C. 2441 (E.D. La. 1983).

5. Judge John Minor Wisdom is universally recognized as one of this country's preeminent admiralty jurists. In fact, the Fifth Circuit courthouse is named in his honor. Volume 888 of the F.2d series, at pages C-CII, contains a *vita* on Judge John Wisdom which notes that he has written landmark opinions in the field of admiralty law.

Certain Admiralty and Maritime Claims, Rule F, permit enjoining ship owners *only* and "makes no reference to enjoining proceedings against any other parties." In so declaring, the Fifth Circuit specifically addressed the cases now relied upon by Ingram, and either rejected or distinguished those holdings.

Ingram also argued below that *Zapata* was, somehow, limited to the specific facts of that case. However, there is nothing in the language of *Zapata* that indicates the Fifth Circuit intended to limit its holding. This is evident in the Fifth Circuit's broad discussion of the plain wording of § 187 and its efforts to reconcile certain past cases as consistent with the clear wording of the statute and its rejection of other cases as inconsistent.[6]

Below, Ingram has twice contended that *Zapata* was in "obvious conflict" with *Guillot v. Cenac Towing, Inc.*, 366 F.2d 898 (5th Cir. 1966). *Guillot* involved the determination of whether officers (*i.e.*, businessmen) of a corporate shipowner qualified as "officers" (*i.e.*, vessel masters and officers) under § 187, which expressly provides that limitation of liability shall not be construed to affect remedies against "masters, officers, or seaman."[7] The Fifth Circuit, in *Guillot*, found that the term "officers" in § 187 applied to "officers who are a part of the crew of the offending vessel, not

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6. Most important here is the Fifth Circuit's rejection of the holding in the Ninth Circuit's case, *In re: Complaint of Paradise Holdings, Inc.*, 795 F.2d 756 (9th Cir. 1986). *See* discussion, *infra*. This is the same case Ingram relies upon in connection with this writ petition.

7. 46 U.S.C. § 187.

executive officers of the corporate shipowner."[8] The concern in *Guillot* was that the admiralty court had exclusive jurisdiction to "determine whether the actions of the officers would be such that the shipowner could be charged with privity and knowledge of those actions."[9] The court's concern arose from a situation in which the parties involved, the corporate shipowner and the corporate officers behind the corporation, were, in a sense, unseverable. The Fifth Circuit correctly noted that these facts were inapposite to those in *Zapata*, which involved the lifting of a stay against the master of the vessel, a position that is expressly excluded by § 187 from limitation of liability. Likewise, in connection with this writ petition, there is no issue of corporate identify meriting an expansive reading of § 187.

Ingram cites the Supreme Court's decision in *Maryland Cas. Co. v. Cushing*, 347 U.S. 409, 74 S. Ct. 608 (1954) as authority for the proposition that stay orders can be extended to include vessel masters and officers. In *Cushing*, this Court extended a stay in proceedings against the vessel's insurer. At issue was Louisiana's direct action statute, which would have allowed separate proceedings directly against the insurer. The Court found that a separate suit against the insurer would "impair the owner's and charterer's right to indemnification for the amount of damages awarded against them."[10] In such a case, an owner might be unable to defend a challenge to its limitation of liability on the grounds that the mishap occurred without its "privity or knowledge".[11]

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8. *Guillot*, at 906.

9. *Zapata*, at 486.

10. *Cushing*, at 608.

11. *Cushing*, at 614.

The facts here do not give rise to the concerns present in *Guillot* and *Cushing*. Ingram and its crew are separate parties; they are not "identified" with each other. Although corporate officers and a shipowner's insurer are technically "non-owners", their interests are bound with those of the shipowner and their involvement in the suit stems from their relationship with the shipowner. They would not be named in suits if it were not for this involvement. Ingram's crew members, however, were not named defendants because of their relationship to the shipowner but because of their own independent acts of negligence.[12]

Below, but not before this Court, Ingram cited only one post-*Zapata* case in support of its position, and that case reaffirms the mandate that exceptions to a strict reading of § 187 have been allowed only in cases where the interests of the shipowner and the non-owner are intrinsically bound together. *In re: Waterman Steamship Corp.*, 1993 A.M.C. 1501 (E.D. La. 1992). *Waterman Steamship* involved a motion by a manufacturer to stay a state action against it. The manufacturer sought to cross-claim against the shipowner; the state actions against the shipowner were stayed because of a federal limitation proceeding. The court denied the motion, stating that while proceedings against IMO [the manufacturer] "would indirectly involve some of the same issues as those in the limitation proceeding," the action in state court would not "affect the availability of insurance monies, nor determine whether Waterman's [the shipowner's] liability should be limited."[13] Significantly, in finding the

12. The Fifth Circuit implicitly recognized that the interests of the shipowner and the master were likewise separate. This is seen in its reconciliation of the facts of *Guillot*.

13. 1993 A.M.C. at 1505. In its discussion, the Fifth Circuit reviewed prior cases concerning exceptions to a strict reading of (Cont'd)

action against the manufacturer too "remote" to justify crossing the line between federal limitation and savings to suitors rights,"[14] the court went on to note that

> [t]he Limitation Act is very specific about applying to "owners" and the court-created exceptions are extremely narrow and have been created for situations in which the ship owner is directly affected. . . . *Even state actions against an operator and manager of a ship in limitation have been found to be too remote to justify an injunction against them.*[15]

It logically follows that collateral state court actions against a pilot or crew member of a vessel whose owner seeks limitation are also too remote to justify any injunction. This is particularly true where the crew members are independently negligent. Here, Ingram's interests are not "directly affected", although there may be, as in any case where multiple defendants are present, some of the same issues in the different actions. Because the action against the pilot and crew is "distinct and separate" from the limitation proceeding, Judge Parker and the Fifth Circuit each correctly held that a federal district court cannot stay the state court proceedings.[16]

(Cont'd)
§ 187; however it should be noted that the cases named in *Waterman* are all pre-*Zapata* cases such as *Guillot*.

14. 1993 A.M.C. at 1505.

15. 1993 A.M.C. at 1505, citing *In the matter of the Complaint of Amoco Transport Co.*, 1979 A.M.C. 1017 (N.D. Ill. 1979) (emphasis added).

16. 1993 A.M.C. at 1505.

In re: Waterman stressed the balancing of the "competing goals of preserving the state forum for a jury to adjudicate the claim and the federal policy of limiting owner liability."[17] It denied the manufacturer's motion on the basis that both goals could be satisfied by denying an extension of the stay to the manufacturer.

Ingram cites *In re: Complaint of Paradise Holdings, Inc.*, 795 F.2d 756 (9th Cir. 1986) in an effort to create a "fissure" between the Fifth and Ninth Circuit Courts of Appeal. That 1986 case held that allowing state court litigation against a vessel's captain to precede the limitation trial would result in the risk that the shipowner would be denied its insurance coverage, as the state court decision could have some preclusive effects on the issues of the shipowner's knowledge and privity in the limitation proceeding. In 1991, in *Zapata*, the Fifth Circuit in Judge Wisdom's opinion directly addressed *Paradise Holdings* and *explicitly rejected* it:

> Although the Court of Appeals for the Ninth Circuit may be right in finding that the purposes of the Act are inconsistent with the remedies reserved by § 187, it is not within the province of this Court to reconcile any such inconsistencies when the language of the Act is plain, as in this case. The Act provides for stays of litigation against the ship *owners*, not masters; therefore, we find that a stay of litigation against the master is not within the scope of the Act.[18]

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17. 1993 A.M.C. at 1505.

18. *Zapata*, at 486.

Zapata was adamant in its position that any change to the plain words of the Act should come from Congress, and not from the Court's own interpretation.[19] Since pilots and crewmembers are not shipowners, they do not fall within the plain meaning of § 187. The Fifth Circuit made it clear that a stay could not be maintained against a party excluded from limitation of liability under this section. The policy of construing narrowly the application of limitation of liability was an overriding concern for the Fifth Circuit, and thus Ingram's contention that the United States Supreme Court should adopt the ruling of the Ninth Circuit would result in an aberration from policies embodied in § 187.

One final point: Congress made it clear in § 187 that certain parties should be excluded from limitation of liability. Owners, masters, and seamen are all excluded from the scope of the Act.[20] The modern origin of limitation of liability become a feature of the English Admiralty Law in 1734. Our Act passed in 1851, after American shipowners petitioned Congress for limitation of liability legislation similar to that enacted in England. The Act passed with no debate in the House and less than a day's debate in the Senate. (*See* Gilmore & Black, *The Law of Admiralty*, 2d ed. 1975, p. 819). Legal commentators have expressed doubt about the continuing rationale for the limitation of liability statute. Dissenting with three others in *Maryland Cas. Co. v. Cushing*, 347 U.S. 409, 74 S. Ct. 608, 98 L. Ed. 806 (1954), Justice Hugo Black observed:

> . . . Many of the conditions in the shipping industry which induced the 1851 Congress to pass the Act no longer prevail.

(*Cushing*, 98 L. Ed. at 826).

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19. *Zapata*, at 487.

20. 46 U.S.C. § 187.

Limitation of liability was established before the advent of the corporation, to protect shipowners from liability after the destruction or loss of a vessel. Now that the corporate device has been widely accepted, and insurance to protect from loss is readily available, the need for limitation is questionable as it shows increasing signs of obsolescence.[21] The narrow scope of the Act is proof that Congress intended it to apply to Shipowners only, as it did in the last century.

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21. *See* Frank L. Maraist, *Admiralty in a Nutshell*, at pages 304-306. Also see Gilmore & Black, *The Law of Admiralty* (2d ed. 1975), at page 822.

CONCLUSION

Because the pilot and other crew members in question are not the shipowner nor parties whose interests are "directly affected" by the shipowner, there is no reason to extend the outdated — but still clearly limited — protection afforded by the Act to these parties. For this reason, and for the others set forth above, Ingram's petition for a writ of certiorari should be summarily denied.

Respectfully submitted,

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